

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1716 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SALIM IBRAHIM FATEH

Versus

BAI MANKUNVAR

Appearance:

MR JV DESAI for Petitioner
MR KC SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 05/05/2000

ORAL JUDGEMENT

#. This is tenant's revision under Section 29(2) of the
Bombay Rent Act against the judgment and decree of the
lower appellate court dated 19-7-1984.

#. The facts giving rise to this revision are as under.

#. One room was let out by the plaintiff respondent to the defendant revisionist. He fell in arrears of rent from 11-11-1975 to 10-10-1980. Out of this, the defendant deposited Rs.400/- in rent petition No. 8 / 1976. Deducting this amount, a sum of Rs.706.25 ps was alleged to be due from the defendant revisionist. Notice was given by registered post which could not be served as the defendant was not found at the address given. Notice was also sent under postal certificate which was not returned to the sender. Thus, service of notice was presumed. Since the arrears of rent were not paid within a month of service of notice, suit for eviction of the revisionist was filed.

#. The suit was resisted by the revisionist on the ground that after receiving the notice, he filed rent petition No. 8/76 for fixation of standard rent and had deposited interim standard rent at the rate of Rs.8/- per month. However, application for fixation of standard rent was dismissed and the rent was fixed at Rs.18.75 ps per month as standard rent. Against this, the tenant revisionist preferred revision application No. 6/80 which is still pending. In view of this, it was pleaded that decree for eviction cannot be passed because the dispute of standard rent is pending. Both the courts below found that the defendant revisionist was in arrears of rent exceeding 6 months and that it was not paid within a month of receipt of notice. It was however found that since the rent was not regularly deposited by the defendant, he was liable to be evicted. The decree for eviction was passed by the trial court.

#. An appeal was preferred which was dismissed by the appellate court, hence this revision.

#. Shri J.V.Desai, learned counsel for the revisionist has been heard so also Shri K. C. Shah, learned counsel for the respondent.

#. Shri J. V. Desai has drawn my attention to the findings of the appellate court on point Nos. 1 & 2 and has argued that since the appellate court found that the plaintiff failed to prove that the defendant is in arrears of rent for more than 6 months, decree for eviction could not be passed. He further argued that on point No.2, the appellate court found that the plaintiff established that the defendant was ready and willing to pay the rent and in face of this finding, again decree for eviction is illegal and contrary to law.

#. I have examined the judgment of lower appellate court on the point. It was a case apparently not covered by Section 12(3)(a) of the Bombay Rent Act because after receipt of notice of demand, the revisionist moved application for fixation of standard rent and he also deposited interim standard rent at the rate of Rs.8/- per month. His application was rejected and standard rent was fixed at Rs. 18.75 ps. The revision against that order is pending. Consequently dispute of standard rent has not been finally decided so far, hence the case is not covered by Section 12(3)(a).

#. There is some confusion in the findings recorded by the lower appellate court on Page 7 of the certified copy of the judgment. In the bottom, it has been observed by the lower appellate court as under.

"So it cannot be said that the appellant - defendant is in arrears of rent for more than six months. Therefore, this case cannot be covered under Section 12(3)(a) of the Bombay Rent Control Act."

##. This finding was given keeping in view the fact that the dispute regarding fixation of standard rent was pending before the revisional court. On the contrary, on Page 9 of certified copy of the judgment, the lower appellate court observed that;

"Thus it is clear from the evidence on record that the appellant - defendant has not paid rent regularly and he is in arrears of rent for more than six months."

So this is a categorical finding of lower appellate court that the defendant revisionist was in arrears of rent for more than 6 months.

##. Even if the case was not covered by Section 12(3)(a) of the Bonbay Rent Act, the decree for eviction could be passed only when the tenant did not comply with the provisions of Section 12(3)(b) of the Rent Act and on this point, there is categorical finding of the lower appellate court based upon the finding of the trial court that the tenant had deposited on 14-4-81 a sum of Rs.971.75 ps and on 25-6-81 Rs.75/-, on 17-6-82 Rs.56.27 ps and on 16-9-82 Rs.75/-. No further deposit was established by the tenant. Consequently, mandatory requirement of Section 12(3)(b) that the tenant should have regularly deposited in the trial court as well as in the appellate court, the rent, has not been made out.

The tenant was therefore not entitled to protection under Section 12(3)(b) of the Rent Act.

##. In view of the above discussion, it can be said that the decree for eviction was rightly passed by the trial court which was rightly confirmed by the lower appellate court. Therefore, there is no merit in this revision which is liable to be dismissed and is hereby dismissed with no order as to costs.

##. Shri J. V. Desai now requested that the revisionist may be granted one year's time to vacate the premises to which Shri K. C. Shah, learned counsel for the respondent has no objection. As such, the revisionist shall hand over vacant possession of the disputed portion to the respondent on 31st May, 2001 and shall pay the entire decreetal amount and mesne profits upto date on or before 20th June, 2000 and shall also file usual undertaking that during this period, he shall not hand over, let out or assign the suit premises to anybody. The undertaking be filed within period of 6 weeks from today. The revisionist shall go on paying future mesne profits regularly upto 31st May, 2001 on the 5th day of each English calender month.

Date : 5-5-2000 [D.C.Srivastava, J.]

#kailash#